



**The Comptroller General  
of the United States**

Washington, D.C. 20548

## Decision

**Matter of:** Contracting Programmers & Analysts, Inc.

**File:** B-228346

**Date:** October 14, 1987

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### DIGEST

Protest filed with General Accounting Office (GAO) 7 weeks after protester knew the bases for its protest is dismissed as untimely. Dismissal is appropriate regardless of whether intervening letter written to contracting agency, in which protester expressed the "intent" to protest "at the appropriate time," is considered the filing of an agency-level protest, because agency acted adversely to protester's position approximately 1 month before protester filed at GAO.

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### DECISION

Contracting Programmers & Analysts, Inc. (CP&A), has protested the Army's decision to exclude the company's proposal from the competitive range under request for proposals (RFP) No. DAAE07-87-R-Q002, issued by Army's Tank-Automotive Command, Warren, Michigan.

We dismiss the protest because it is untimely filed under our Bid Protest Regulations (4 C.F.R. part 21 (1987)).

The RFP required the submission of a technical proposal in accordance with the RFP's evaluation standards and a cost proposal which was to be evaluated separately from the technical proposal. The RFP also provided that the "technical area will be weighted substantially more than the cost area."

The Army says it evaluated CP&A's proposal and found that the proposal was not reasonably subject to being made acceptable through negotiations and would not, therefore, be considered further for award. The Army insists its contracting officer then sent a letter to CP&A on August 4, 1987, which specifically informed the company that its proposal "did not meet minimum requirements" with regard to three of the four technical evaluation standards, namely:

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"Understanding of the Requirements," "Project Management," and "Offeror's Experience and Qualifications." This letter was relatively detailed. As to "Understanding of the Requirements," for example, the Army faulted CP&A's proposal for providing "virtually no supportive documentation" which reflected understanding of the Army's requirements and for not including the company's "plans for meeting the tasks specified." As to "Project Management," the Army informed CP&A that its "proposal systems methodology was not adequately addressed" to show ability to manage the contract. Finally, as to "Offeror's Experience and Qualifications," the Army informed CP&A that the company's proposal lacked information in several respects, including the adequacy of the company's performance on previous and current projects or contracts involving complex military information systems. Although CP&A says that it never received the original of the August 4 letter, the company does admit that it received a copy of this letter, furnished by the Army, no later than August 18, 1987.

Prior to CP&A's receipt of the August 4 letter, the Army's contracting specialist for the RFP states that on August 12, 1987, he had two telephone conversations with a representative of the protester. The contracting specialist states that during the first of these conversations he read the contents of the August 4 letter to the representative. During the second telephone conversation that same day the specialist states the contracting officer "fully explained" to the representative why CP&A's proposal was no longer being considered for the contract to be awarded based on the reasons set forth in the August 4 letter. To the contrary, the CP&A representative then insisted during the second conversation that the real reason CP&A's proposal was excluded was not the perceived technical unacceptability of the company's proposal but, rather, because of the results of an alleged "negative cost report from [the Defense Contract Audit Agency (DCAA)]" on the protester's proposal. The CP&A representative also questioned the contracting officer as to why a cost audit had been ordered on CP&A's proposal and an additional proposal acceptance period had been sought from CP&A when, during nearly the same time period, the company's proposal had been found to be unacceptable by the Army. In reply, the contracting officer stated during the August 12 conversation that the cost evaluation on CP&A's proposal was done "concurrently with the technical evaluation to save lead time" and that the Army had asked the company to extend its proposal acceptance period before the field of acceptable initial proposals had been determined because not to have asked for the extension would have been "premature."

Subsequent to these telephone conversations, CP&A mailed to the Army an August 18 letter which repeated CP&A's August 12 position that the real reason for excluding the company's proposal was the outcome of the DCAA audit and not the reasons set forth in the August 4 letter. Finally, CP&A stated, it "intends to protest award of this solicitation at the appropriate time." By letter of August 27, 1987, to CP&A the contracting officer reiterated his position that the reasons for excluding the proposal were only those described in the Army's August 4 letter.

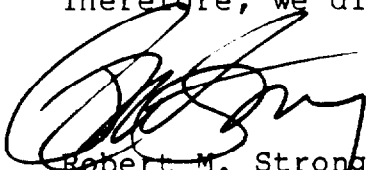
On September 29, 1987, we received CP&A's letter of protest to our Office. This protest was essentially to the same effect as the position earlier taken by the company with the Army: namely, that the real reason for excluding the company's proposal was the allegedly "unfavorable report from the DCAA audit" rather than the reasons set forth in the Army's August 4 letter.

It is apparent that CP&A knew the basis for its September 29 protest to our Office no later than August 12, 1987, when, during the telephone conversations with the Army's representatives the Army clearly informed CP&A that the reasons for excluding the proposal related solely to technical areas of concern rather than the DCAA audit. Although the company expressed an intent to file a protest at an appropriate time, it did not in fact do so until September 29, 1987, with our Office, more than 10 working days after the basis of protest was known to the protester on August 12, 1987. Consequently, the protest is untimely filed under section 21.2(a)(2) of our Bid Protest Regulations, which provides that a protest involving other than RFP defects must be filed within 10 working days after the basis of protest is known or should have been known, whichever is earlier.

We think the most reasonable interpretation of a letter expressing an "intent" to protest an "award" (which had not yet occurred) at an "appropriate time" is that it is referring to something the protester may do in the future rather than to the present filing of a protest. It is clear that the contracting officer so interpreted this language and we were uncertain of the protester's intent until we obtained clarification of its identically-worded protest to us. Nevertheless, CP&A appears to consider its August 18 letter to the Army to have been an agency-level protest. Even accepting this interpretation of its language, its protest here is untimely, because that "protest" in effect was denied by the contracting officer in his letter of August 27. Allowing 1 week for CP&A's receipt of that letter, its protest filed with us on September 29 was received more than 10 working days of when it should have known of initial adverse action on its agency-level protest.

4 C.F.R. § 21.2(a)(3). Therefore, whether CP&A's August 18 letter to the Army is regarded as an agency-level protest or as an expression of an intent to protest at some time in the future, its subsequent protest to our Office was untimely.

Therefore, we dismiss the protest.

A handwritten signature in black ink, appearing to read 'R. Strong', is written over the typed name.

Robert M. Strong  
Deputy Associate  
General Counsel